

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

TAMARA CONLEY- PROCTOR,)	
)	
Plaintiff,)	
)	
v.)	No. 2:17-cv-02315-JTF-cgc
)	
SHELBY COUNTY SCHOOLS)	
(VIRTUAL SCHOOL),)	
CLEON FRANKLIN, Director,)	
KATRINA CRESSWELL,)	
Academic Manager,)	
)	
Defendants.)	
)	

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DISMISSING CASE WITH PREJUDICE**

Before the Court is Defendants' Motion for Summary Judgment that was filed on February 21, 2018. (ECF No. 34.) The motion was referred to the assigned United States Magistrate Judge for management of all pretrial matters pursuant to 28 U.S.C. § 636(b)(1)(A) and 28 U.S.C. §§ 636 (b)(1)(B) & (C) and West Tenn. L.R. 4.1(b)(1). On April 26, 2018, the Magistrate Judge issued a Report and Recommendation in which she recommended that Plaintiff's Complaint be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and that the Motion for Summary Judgment be denied as Moot. (ECF No. 39). To date, Plaintiff has not filed any objections to the Magistrate Judge's Report and Recommendation. Accordingly, the Court adopts the Report and Recommendation and orders the case Dismissed.

I. STANDARD OF REVIEW

Congress passed 28 U.S.C. § 636(b) "to relieve some of the burden on the federal courts

by permitting the assignment of certain district court duties to magistrates.” See e.g. *Baker v. Peterson*, 67 F. App’x 308, 311, 2003 WL 21321184 (6th Cir. 2003) and Fed. R. Civ. P. 72(a).

When a Magistrate Judge submits to a district judge proposed findings of fact and recommendations, any party may serve and file written objections to such proposed findings and recommendations in accordance with the rules of court. 28 U.S.C. §§ 636(b)(1)(B)-(C). After reviewing the evidence, the Court may accept, reject, or modify, in whole or in part, any findings or recommendations made by a Magistrate Judge. *Id.* A Court need not review any portion of the recommendation to which a plaintiff does not specifically object. Therefore, it may adopt the findings and rulings of a Magistrate Judge to which a specific objection is not filed. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1985). As noted, Plaintiff has not filed any objections to the Magistrate Judge’s Report and Recommendation in this case.

“*Pro se* litigants . . . are not exempt from the requirements of the Federal Rules of Civil Procedure.” *Payne v. Lucite International*, No. 13-2948-STA-tmp, 2014 WL 2826343 at *4 (W.D. Tenn. June 23, 2014) (*citing Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989), *reh’g denied*, (Jan. 19. 1990)). In addition, Fed. R. Civ. P. 41(b) authorizes a district court to enter *sua sponte* an order of dismissal. *Steward v. City of Jackson, Tenn.*, 8 F. App’x 294, 296 (6th Cir. 2001).

Rule 41(b) provides:

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule — . . . operates as an adjudication on the merits.

“When contemplating dismissal of an action under Rule 41(b), a court must consider: (1) whether the party’s failure to cooperate is due to willfulness, bad faith, or fault; (2) whether the

adversary was prejudiced by the dilatory conduct of the party; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered. *Steward*, 9 F. App'x at 296.

II. ANALYSIS

On May 8, 2017, Plaintiff initiated this action *pro se* in which she raised various discrimination and retaliation claims in violation of Title VII, 42 U.S.C. §§ 2000e, *et al*, against her former employer Shelby County Schools (“Virtual School”) and other individually named parties. (ECF No. 1.) As noted above, the Defendants filed a Motion for Summary Judgment on February 21, 2018. (ECF No. 34.) On April 3, 2018, the Magistrate Judge issued an Order for Plaintiff to show cause within fourteen (14) days why her case should not be dismissed for failure to respond to the Defendants’ Summary Judgment motion pursuant to Fed. R. Civ. P. 56 and L.R. 56.1. (ECF No. 38.) The Show Cause Order further advised Plaintiff that a failure to comply with the Show Cause order could result in dismissal of her case for failure to prosecute the action. (*Id.*) To date, the record reflects that Plaintiff has not filed a response to the Defendants’ Motion for Summary Judgment or a timely response as directed to the Magistrate Judge’s Order to Show Cause.

Upon further review of the Report and Recommendation, the Magistrate Judge also referenced Plaintiff’s failure to respond to Defendants’ discovery requests, to comply with other Court orders which compelled her to respond to these discovery requests, and to appear as scheduled before the undersigned Court for a status conference. (ECF Nos. 29, 33, 35 & 37.) These failures completely justify the Magistrate Judge’s recommendation for *sua sponte* dismissal of the action by the Court for failure to prosecute. The Court has also granted Plaintiff

extensions to obtain counsel and extensions to the scheduling order deadlines due to other personal difficulties. (ECF Nos. 19, 27, 30 & 31.) However, the Court is not authorized to excuse a party, even one proceeding *pro se*, from continued noncompliance with orders issued by the undersigned Court or the Magistrate Judge. The time allowed for Plaintiff to respond to the Order to Show Cause has long expired. The Order to Show Cause, ECF No. 38, sufficiently warned Plaintiff that her failure to respond could result in dismissal her case. *Wells*, 891 F.2d at 594; *Steward*, 9 F. Appx at 296. Finally, Plaintiff did not file any objections to the Magistrate Judge's Report and Recommendation as required under 28 U.S.C. §636(b)(1)(C).

Accordingly, the Court finds that the Magistrate Judge's Report and Recommendation should be Adopted, the case is ordered Dismissed *sua sponte* pursuant to Fed. R. Civ. P. 41(b). and the Defendants' Motion for Summary Judgment, ECF No. 34, is Denied as moot.

IT IS SO ORDERED on this 17th day of May, 2018.

s/John T. Fowlkes, Jr.
JOHN T. FOWLKES, JR.
UNITED STATES DISTRICT JUDGE